

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 8466-AG09-0820-194

IN THE MATTER OF:

Richard D. Hayward

Respondent

2233 Blossomwood Drive  
Oviedo, FL 32765

Type of Agency Action: Enforcement

Indiana Resident Producer License No. 606757

**FILED**

MAR 24 2010

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER**

On February 5, 2010, the Administrative Law Judge, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended order and Notice of Filing Recommended Order on Respondent by mailing the same to his address of record.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

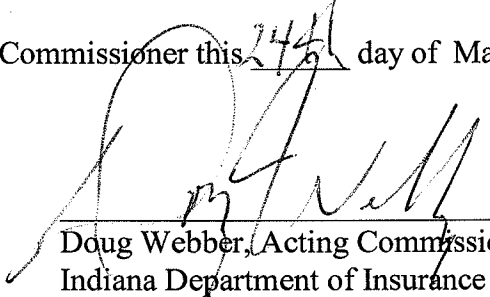
3. Respondent has not filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than eighteen (18) days have elapsed.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED, by the Commissioner of Insurance:

1. Respondent shall pay to the Department a civil penalty in the amount of three thousand five hundred (\$3,500.00) dollars within sixty (60) days of the Final Order.
2. Respondent's Indiana producer license is hereby permanently revoked.

ALL OF WHICH IS ORDERED by the Commissioner this 24<sup>th</sup> day of March, 2010.



Doug Webber, Acting Commissioner  
Indiana Department of Insurance

Copies to:

Lisa Harpenau  
Indiana Department of Insurance  
311 W. Washington Street  
Suite 300  
Indianapolis, Indiana 46204

Richard D. Hayward  
2233 Blossomwood Drive  
Oviedo, FL 32765

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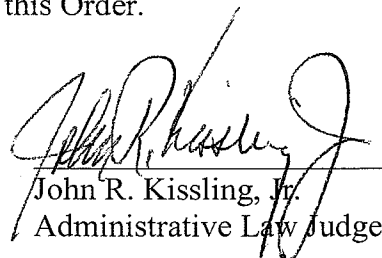
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STATE OF INDIANA  
DEPT. OF INSURANCE

**NOTICE OF FILING OF RECOMMENDED ORDER**

The parties of this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order are deemed filed as of this date.

To preserve an objection to this order for judicial review, you must object to the order in a writing that: 1) identifies the basis for your objection with reasonable particularity; and 2) is filed with the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.

  
John R. Kissling, Jr.  
Administrative Law Judge

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

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STATE OF INDIANA  
DEPT. OF INSURANCE

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDED ORDER

John R. Kissling, Jr., the administrative law judge ("ALJ") in this matter, submits the following Findings of Fact, Conclusions of Law and Recommended Order. The Indiana Department of Insurance was at all times represented by counsel, Lisa Harpenau. Richard Hayward ("Respondent") was not present at the hearing. Based upon the evidence presented at the hearing, the ALJ makes the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. At all times relevant herein, Respondent was a licensed non-resident producer in the State of Indiana holding non resident producer license number 606757. (Dep't. Ex. 1).
2. The Department received notification from Liberty Mutual on July 21, 2009 regarding Respondent's activities as a licensed producer in the State of Indiana. (Hr'g. Tr. at p. 14, Dep t. Ex. 4).

3. Specifically, Respondent was arrested on September 11, 2008 for the criminal use of personal identification information. (Hr'g. Tr. at p. 18, Dep't. Ex. 6).

4. Respondent was charged with two counts of criminal misconduct in the Circuit Court of Orange County in the State of Florida. The first count was for the fraudulent use of personal identification information, a felony. The second count was for obtaining a credit card through fraudulent means, a misdemeanor. (Hr'g. Tr. at p. 20, Dep't. Ex. 6).

5. A pre-trial conference was held on March 10, 2009. (Hr'g. Tr. at p. 18).

6. Respondent was adjudged guilty of the second count, a misdemeanor, on July 1, 2009. (Hr'g. Tr. at p. 21; Dep't. Ex. 6).

7. Respondent's statement to Liberty Mutual on July 11, 2009 incorrectly stated that the charges were because of Respondent's relationship with a Gary Oakley who co-signed on a credit card with Respondent. (Hr'g. Tr. at p. 18-19, Dep't. Ex. 4)

8. According to the arrest affidavit of Detective Robert Chamberlin, Respondent opened a new credit card in Mr. Oakley's name which had a past due balance of over \$7,000.00. Mr. Oakley never consented to this. (Hr'g. Tr. at p. 19, Dep't. Ex. 6).

9. On August 20, 2009, the Department attempted to resolve this matter with Respondent via an Agreed Entry whereby Respondent would agree to pay an administrative fine in the amount of \$1,000.00, and have his Indiana license put on probation for a period of one (1) year. Respondent rejected this offer by the Department. (Hr'g. Tr. at p. 24-26, Dep't. Ex. 7)

10. The Department received notification from Liberty Mutual on August 31, 2009 regarding Respondent's license status in the State of Kentucky. (Hr'g. Tr. at p. 16, Dep't. Ex. 5).

11. Specifically, the Commonwealth of Kentucky, Department of Insurance, revoked Respondent's license on August 11, 2009 for using fraudulent, coercive, or dishonest practices;

or demonstrating incompetence, untrustworthiness, or financial irresponsibility. (Hr'g. Tr. at p. 23-24, Dep't Ex. 5).

12. In Respondent's August 21, 2009 statement to Liberty Mutual, Respondent disclosed an additional arrest in February of 1999. This criminal arrest was disclosed to the Department during Respondent's initial licensing. (Hr'g. Tr. at p. 24, Ex. 5).

13. On September 17, 2009, the Department filed a statement of charges against Respondent for failing to timely notify the Department of a criminal prosecution and for using fraudulent or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere. (Hr'g. Tr. at p. 10, Dep't. Ex. 1).

14. The Department notified Respondent of the evidentiary hearing which was set for October 21, 2009 via certified mail number 7005 3110 0002 4440 3170. (Hr'g. Tr. at p. 11, Dep't. Ex. 2).

15. Respondent received the notice of the evidentiary hearing on September 22, 2009. (Hr'g. Tr. at p. 12, Dep't. Ex. 3).

16. The Department requested that the October 21, 2009 hearing date be continued. The ALJ granted this continuance and ordered that the evidentiary hearing be held on November 5, 2009. (Hr'g. Tr. at p. 12).

17. The Department attempted to contact Respondent on numerous occasions to determine whether Respondent intended to appear at the November 5, 2009 hearing. (Hr'g. Tr. at p. 12-13).

18. The Department also attempted to inform Respondent that he could participate in the hearing by phone. (Hr'g. Tr. at p. 13-14).

19. Respondent failed to return any of the Department's phone calls, and failed to appear at the November 5, 2009 hearing. (Hr'g. Tr. at p. 12-13).

20. On September 18, 2009, the Department sent a subpoena to Respondent requesting a copy of a deposition of Mr. Oakley that, according to Respondent, was evidence that Respondent had the authority to obtain a credit card in the name of Mr. Oakley. Such evidence would have been considered by the Department as a mitigating factor in seeking administrative action against Respondent's license. (Hr'g. Tr. at p. 29, Dep't. Ex. 9).

21. In the same correspondence, the Department requested that the Respondent provide the Department with a list of appointments pursuant to Indiana Code section 27-1-15.6-12(g). (Hr'g. Tr. at p. 29, Dep't. Ex. 9).

22. The subpoena and request for list of appointments was sent via certified mail number 7005 3110 0002 4440 3194. Respondent received this correspondent on September 25, 2009. The Department has received no response from the Respondent. (Hr'g. Tr. at p. 30, Dep't. Ex. 10 & 11).

23. The Department received notification from Liberty Mutual on September 30, 2009 regarding Respondent's employment status with Liberty Mutual. (Hr'g. Tr. at p. 28, Dep't. Ex. 8).

24. Specifically, Liberty Mutual terminated Respondent for his failure to timely notify the company of the arrest and misdemeanor charge which resulted in the revocation of Respondent's Kentucky producer license which was required for his employment with Liberty Mutual. (Dep't. Ex. 8).

#### CONCLUSION OF LAW

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to

Indiana Code sections 27-1-1-1 and 27-1-15.6-12(b).

2. The hearing in this matter was held in accordance with the Indiana Administrative Orders and Procedures Act. *See* Indiana Code sections 4-21.5-3 *et seq.*

3. The Department has met its burden in showing by a preponderance of the evidence that Respondent's conduct is contrary to the Indiana Insurance Code and that additional disciplinary action, including civil penalties and a permanent revocation of Respondent's license, is warranted.

4. Pursuant to Indiana Code section 27-1-15.6-12(b), the Commissioner of Insurance has the authority to levy a civil penalty, place a producer's license on probation, suspend, revoke or permanently revoke a producer's license, refuse to issue or renew a producer's license, or take any combination of these actions for engaging in any of the enumerated acts found therein.

5. Pursuant to Indiana Code section 27-1-15.6-12(b)(f), the Commissioner of Insurance has the authority to issue a civil penalty in an amount up to \$10,000.00 for engaging in any of the enumerated conduct in Indiana Code section 27-1-15.6-12(b).

6. Respondent violated Indiana Code section 27-1-15.6-17(b) when he failed to notify the Department, not more than thirty (30) days after the initial pretrial hearing date, of the criminal prosecution in the Circuit Court of Orange County, State of Florida.

7. Respondent violated Indiana Code section 27-1-15.6-12(b)(8) when he was convicted of a criminal misdemeanor for obtaining a credit card through fraudulent means.

8. Respondent violated Indiana Code section 27-1-15.6-12(b)(2)(C) when he failed to respond to a subpoena of an insurance commissioner.

9. Respondent violated Indiana Code section 27-1-15.6-12(h) when he failed to provide a list of appointments not more than ten (10) days after he received the request for said



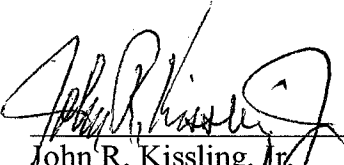
appointments.

10. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated as such.

RECOMMENDED ORDER

In accordance with the foregoing Findings of Facts and Conclusions of Law, which are hereby adopted, it is now ORDERED that:

1. Respondent shall pay to the Department a civil penalty in the amount of \$3,500.00. Such payment will be due within 60 days from the date of the Final Order.
2. Respondent's Indiana producer license is hereby permanently revoked.

  
\_\_\_\_\_  
John R. Kissling, Jr.  
Administrative Law Judge

Distribution:

Richard Hayward  
2233 Blossomwood Drive  
Oviedo, FL 32765  
*Respondent*

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